IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3998 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHOOMI INDUSTRIES

Versus

CHIEF ENGINEER (APPEAL) OR SUCCESSOR

Appearance:

MR BHARGAV N BHATT for Petitioner

MR MD PANDYA for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside the impugned orders at Annexures `A' and `B' respectively. By Annexure `A', dated 30th September, 1997, a supplementary bill was issued to the petitioner and he was asked to pay Rs. 20,97,570.92 and by Annexure

`B',dated 16th February, 1999, the appeal filed by the petitioner was partly allowed and he was asked to pay remaining amount, reducing the quantum on the basis of deduction of 28 days on account of weekly staggering and public holidays.

The case of the petitioner was that it is a partnership firm running an industry in the name and style of "Bhoomi Industries" . On September 24, 1997, checking squad of Gujarat Electricity Board (`Board' for short) visited and inspected the unit of the petitioner and it was found that there was theft of electricity. Accordingly, statement of the petitioner was recorded and proceedings were initiated. On 25th September, 1997, on the basis of the statement and report of the laboratory , Rojkam was prepared and it was held that the petitioner was liable to pay Rs. 20,97,570.92. Being aggrieved by the supplementary bill, the appellant preferred an appeal.

Before the appellate committee, three contentions were advanced by the petitioner. Firstly, it was urged that the Board had commirtted an error of law in holding that theft of electricity was committed by the petitioner. There was no evidence to that effect and hence, the said finding was liable to be set aside. Secondly, the Board has erred in taking into account 0.6 as shift factor. Instead, it ought to have calculated 0.2 factor as the unit was running for one shift of eight hours and not round the clock. Finally, the Board ought to have calculated less number of days and according to the petitioner, for 60 days , the unit had not worked and to that extent, the amount was required to be reduced.

The appellate committee negatived first two contentions. Regarding third contention, it observed that there were 25 weekly staggering and three Public Holidays being 15th August, Janmasthmi and Raksha Bandhan. Accordingly, the petitioner unit was entitled to deduction for 28 days out of 178 days and order was passed that the petitioner would be charged on the basis of 150 days.

Said order is challenged by filing this petition.

I have heard Mr. Bhargav Bhatt for the petitioner and Mr. M. D. Pandya for the Board.

Mr. Bhatt contended that the petition deserves admission. Relying on Rules 178 and 185 of the High Court Rules, 1993, he submitted that whenever the Court finds that matter is not liable to be summarily dismissed, it is admitted by issuing Rule Nisi (Rule

178). Rule 185 enables this Court to take oral testimony of witnesses. For that purpose, summons may be issued to witnesses and the procedure which is followed under the Code of Civil Procedure, 1908 would also be followed in a petition.

He also submitted that the order passed by the appellate committee is based on "no evidence" and hence, it is liable to be quashed and set aside. According to him, the statement on which reliance was placed by the appellate committee was in Gujarati and the petitioner has asserted in the petition that he is non-Gujarati and something was written in the statement which he was asked to sign and accordingly, he had signed . But he did not understand what was stated in the said statement.

Mr. Bhatt also drew my attention to the fact that though it was the case of the appellate committee that hearing was afforded to the petitioner and order was passed after considering the written representation, that was not a correct statement of fact in the order passed by the appellate committee and out of five members, only four members were present. One member was absent on account of death of one of the officers of the Board at other place, and no hearing took place. Reliance was also placed on affidavit of Ghanshyambhai whose appeal was also fixed on that day. Since the order is arbitrary, unreasonable and violative of principles of natural justice, it is liable to be quashed and set aside.

Mr. Pandya for the Board, on the other hand, supported the order passed by the appellate committee. He submitted that since there was theft of electricity, checking squad inspected the place. Statement of the petitioner was recorded and in token of such statement, his signature was obtained. On the basis of calculation, supplementary bill was issued. The said action was clearly in consonance with law. Appeal was filed before the appellate committee and the expert body, after appreciating the facts and circumstances and taking into account the relevant factors, partly allowed the appeal. The petitioner unit cannot make any grievance against such order. He also submitted that ordinarily in such matters, this Court in exercise of powers of judicial review under Article 226/227 does not enter into appreciation and reappreciation of facts and the order, if it is not otherwise arbitrary, unreasonable will not interfere. Sufficiency or otherwise cannot be the subject matter of petition. He stated that all five members were present and hearing was afforded. Written submissions of the petitioner were also considered and

final order was communicated to the petitioner which bears signatures of all the five members. Since contention was raised that only four members were present and one Mr. H. A. Shah was not present, further affidavit was filed that Mr. Shah was present including the affidavit of Mr. Shah himself asserting that he was present and hearing was afforded to the petitioner. Regarding contention of the petitioner that he is non-Gujarati and he did not understand what was stated in the statement, Mr. Pandya drew my attention to the statement as well as documents on record in which the petitioner has signed in Gujarati and has also raised some objections in Gujarati. He, therefore, submitted that no case has been made out for issuance of rule and petition is liable to be dismissed.

In the facts and circumstances of the case, in my opinion, no case has been made out by the petitioner to entertain the petition and to issue rule.

I am not expressing any opinion as to whether the petition is under Article 226/227 or under both as in my opinion, on merits, the order passed by the appellate committee cannot be said to be illegal or contrary to law.

Regarding hearing, from the facts as well as affidavits on record, it is clear that on the day on which hearing took place before the appellate committee, all the five members were present. Hearing was afforded and written submissions were considered . Affidavit of H. A. Shah is also on record in which he has stated that it is not true that he was not present and he had gone out. He was very much present and hearing was afforded. It cannot be said that order was passed without hearing the petitioner or that one of the members was absent. Hence, the said contention cannot be accepted.

Regarding "no evidence", the appellate committee considered the relevant facts and circumstances particularly on theft of electricity. The committee which consists of experts including a member (technical) who, I am told, is an independent person and not an employee of the Board and also a Judicial Member who is a retired District Judge , has considered the facts and circumstances and observed as under :

"On going through the record, we find from the statement of the e appellant's representative , checking sheet as well as the laboratory inspection report that the plastic seals provided

> on the CT-PT and terminal cover were tampered. According to the finds during checking and also during laboratory inspection, the male parts of the CT-PT seals were changed. The link joining the male and female parts of the CT-PT terminal cover seals were found in broken condition. Moreover, the link joining the male and female parts of the seal No. W6 51717 was green whereas the colour on the outer side of the said plastic seal was grey. Further, according to laboratory, on the standard seal, a round mark is embossed on the male part towards GEB monogram whereas such round mark was absent on both the seals. According to the laboratory , the male part of the terminal cover seals of the CT-PT units were changed and thereby the appellant has committed theft of electric power."

Obviously, the expert committee which consists of experts is expected to appreciate technical aspect of the matter. It has appreciated the same and recorded certain findings. It cannot be said that such findings could not have been recorded by the appellate committee. Hence, in my opinion, the finding recorded by the appellate committee cannot be said to be based on "no evidence" as urged by Mr. Bhatt. without evidence on record.

Regarding shift factor 0/2 or 0./6, the appellate committee considered the submissions made by the petitioner. Before the appellate committee, a certificate of factory inspector was produced. The committee, however, observed that from the said certificate, it was not proved that unit was working only for one shift of eight hours and not round the clock. The committee also observed in the order that the certificate nowhere mentioned that the factory was running for one shift. If in the light of this fact, the committee held that the petitioner was liable to pay on the basis of 0.6 shift factor, it cannot be contended that no such finding could have been arrived at in exercise of the appellate power. That contention also, therefore, has no force.

The aurgument that the petitioner was not knowing Gujarati and he did not understand the contents of the statement recorded on 24th/25th September 1997, apart from the fact that the petitioner appears to have put his signature in Gujarati , it is pertinent to observe that the statement was recorded in September , 1997. But no objection was raised either before the Board or before the appellate committee when the appeal was filed.

Looking to the record, it is clear that before the appellate committee, submissions were made in writing in Gujarati as well as English which is part of the record. But no such objection was raised. The contention was taken for the first time in the present petition which was sworn by the petitioner on 2nd June, 1999 and the petition was filed on 4th June, 1999. Thus, it has been taken for the first time after 18 months.
In my opinion, such argument cannot be permitted to be raised for the first time in this Court. Ordinarily, when the grievance of a person is that his statement was recorded under duress or that he did not know the language in which it was recorded and was asked to sign, his natural conduct would be to raise immediate objection before the authority. But it is not done. That contention, therefore, does not deserve to be upheld.

It was also contended on the basis of extract of register produced by the Board along with affidavit in sur rejoinder, that from the register, it appears that the orders were passed ordinarily within a period of one month and only one order is sent to the party. In the instant case, order was sent after about three months and that two communications were addressed and the Board has not come forward with any reason as to why such a long time was taken in sending by two communications. In my opinion, the point raised by the petitioner is totally irrelevant. Once it is held that the Board has not committed any error in issuing the supplementary bill as the petitioner has committed theft of electricity and the appellate committee , on appreciation of evidence, confirmed that finding, the petitioner has no case and the petition deserves to be dismissed.

For the foregoing reasons, I find no substance in teh petiton. The order passed by the appellate committee does not deserve interference. Petition is accordingly dismissed. Notice discharged. No order as to costs.

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